

ERICKSON

C. ERICKSON AND SONS, INC.

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February 27, 2002

Carlyn Winter Prisk (3HS11)
United States Environmental Protection Agency – Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Section 104(e) Submission
C. Erickson and Sons, Inc.
Lower Darby Creek Area Superfund Site

Dear Ms. Winter Prisk:

This letter is submitted in response to the information inquiry letter (the “104(e) Letter”) sent to C. Erickson and Sons, Inc. (“Erickson” or the “Company”) eliciting information concerning the Lower Darby Creek Superfund Site (the “Site”). As an initial matter, we have a number of general concerns and objections and we offer this response subject to these concerns and objections:

A. Concerns and Objections

1. Fifteen days is simply not enough time to review information and formulate a response to a request of this detail. It is arbitrary, capricious and unreasonable as a matter of law to impose such an unrealistic time schedule on such a comprehensive request. We appreciate the willingness of the United States Environmental Protection Agency (“USEPA”) to consider our request for an extension, but because the 104(e) Letter seeks information concerning events that are 30 to 40 years old, and for which there may be no documentation responding in 15 days, or even 30 days is unrealistic.
2. Erickson objects to the 104(e) Letter to the extent that it asks or demands that we produce information or documents beyond the scope of USEPA’s authority under the laws it has cited to support this request and, to the extent the defined terms are defined in a manner broader than they are in CERCLA, we believe the request is overbroad and not authorized by law.

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3. Erickson has not produced and will not produce information or documents that are subject to a claim of privilege, including, without limitation, a claim of attorney client-privilege, accountant-client privilege or attorney work product. Our responses below assume that such privileged information or documents are non-responsive.
4. Many of the questions are overly broad, vague and ambiguous and we object to the 104(e) Letter on this basis. Our responses below have been developed based on our reasonable interpretation of the questions posed and terms used; our responses have been developed from information reasonably within our possession which appears to be relevant to the Site and issues inquired about.
5. Erickson does not believe USEPA has authority to simply declare, as it has done in the 104(e) Letter, that Erickson is obligated in perpetuity to supplement its answers. Such a timeless obligation is arbitrary, capricious and unreasonable as a matter of law and Erickson disavows any purported obligation as unreasonable and beyond USEPA's statutory authority.
6. Erickson objects to undefined references throughout the 104(e) Letter to terms or phrases such as "the Site", the "properties," "Philadelphia area," the "Landfill" etc., insofar as those terms are undefined and no map or surveyed drawing is provided to identify and described those areas with certainty.
7. Erickson's investigations have been limited to its current employees. We have not sought to track down or interview former employees and object to the 104(e) Letter to the extent it would seek to force the Company to do so, or to develop or present information in any particular form or format not maintained by the Company in the ordinary course of its business.

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B. Responses.

The following responses are provided to the best of the current knowledge of the Erickson personnel identified in response 14 below, neither of whom were employed by the Company in a full time capacity during the relevant time period.

1. *C. Erickson and Sons, Inc.*, 1530 Chestnut Street, Philadelphia, PA 19102. Our telephone number is 215-568-3120. The Company, which was incorporated in Pennsylvania on February 27, 1957, has no parent or subsidiary corporations.
2. Erickson is a small (in terms of its number of employees) construction company offering general contracting, construction management, and design/build services. These services can include new construction, existing building modifications or tenant build outs. This has been the Company's business from the date of its incorporation in 1957 through the present. During most of the relevant time period (1957-1976) Erickson was a smaller operation employing fewer people. Erickson's market is the tri-state area of PA, NJ and DE.
3. *Charles Erickson, Jr.* [REDACTED] Mr. Erickson was the founder of the Company and, as the former President, managed operations during the relevant time period.
4. There were no "waste" documents *per se*. On some jobs, the Company would have been responsible to manage construction wastes associated with its work and in this circumstance, it is unlikely any documentation would have been generated or retained. On other jobs, where the Company might have been a subcontractor, the general contractor or the site owner might have managed waste management – if any type of waste management documentation was generated by others in connection with such management practices, Erickson is unaware of what it was and it does not possess any such documentation today. On still other jobs, there might have been a job roll-off or other container provided by a waste hauling company contracted by the site owner, the general contractor, a tenant, or, possibly, Erickson. Again, Erickson is unaware of any documentation that would have been generated by any such arrangements between the roll-off companies and others. It is possible that Erickson might have received an invoice for any roll-off it may have ordered, although if it did so, no such records exist at the Company today. On still other jobs, Erickson may have used its own truck to haul a load of construction materials generated by its work. In this case, it is unlikely any type of written documentation would have been generated and, if any dump receipts were received, they were not retained. With the 104(e) Letter, USEPA provided what appears to be two dump tickets for a landfill. Erickson does not have any documents of this type in its files and cannot authenticate

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these documents. Also, as a general matter, to the best of its current knowledge, and relevant here, the Company did not generate or handle wastes that were hazardous or polluttional, as we understand those terms. Such wastes, if generated at any of the job sites where Erickson worked would have been special handling matters left to a site owner, general contractor or other person contracting for the work. Erickson's "wastes" would have been typical construction materials, such as wood 2x4s, paper, sheet rock, other wood scraps, sheetrock tape, a few bent nails, floor sweepings/sawdust, and the like. Erickson does not have any contracts or other contracting documents relating to the management or disposal of wastes generated at any of its jobs during the relevant time period. We are not aware of any permits that may have been applied for or obtained in connection with any job undertaken by the Company during the relevant time period; no such documents exist today in Erickson's files.

5. Erickson handled customary, generally accepted and widely used construction materials on the projects it undertook or managed during the relevant time period. It did not manufacture or generate hazardous chemicals or substances and did not produce or prepare MSDSs. To the best of our current knowledge, Erickson did not perform chemical analyses of the commercial construction materials and supplies it would have purchased or utilized in its construction, construction management or design-build activities during the relevant time period. In all cases, materials Erickson purchased for use in such projects would have conformed to job specifications, although, to our knowledge, chemical testing or analysis was never a requirement for demonstration of material suitability during the relevant time period. There are no documents in the Company's possession today that would enable Erickson to identify the chemical composition of such materials, but, again, the products used would have been generally available, widely used construction materials, including dimensional lumber, sheet rock, sheet rock tape, nails, screws, spackle, calk, and the like. Items (a) through (f) are inapplicable, or cannot be answered with any degree of certainty, based on the limited state of the current knowledge of the Company regarding work performed during the relevant time period.
6. See responses 3, 4 and 5 above. Certainly there would have been wastes generated by the construction process but the Company can only speculate about what items would have comprised the waste stream. Most likely it would have included wood 2x4s, paper, pieces of sheet rock, other wood scraps, sheetrock tape, a few bent nails, and the like. We believe (it is our educated guess) that these materials would have been managed in the manner described in responses 3, 4 and 5 above, sometimes by Erickson and sometimes by others, including perhaps a general or sub contractor, the tenant for whom work was being performed, or perhaps the site owner. No documentation exists at the Company today that is responsive to this inquiry. Items

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(a) through (f) are inapplicable, or cannot be answered with any degree of certainty, based on the limited state of the current knowledge of the Company regarding work performed during the relevant time period.

7. See responses 3, 4, 5 and 6 above. The Company does not recall the names of any third-party waste haulers that were used on jobs undertaken during the relevant time period. As stated above, there are occasions when the Company would likely have hauled job trash to a dump in its own trucks, but we do not at this time know which waste disposal sites were used or what the precise waste composition would have been, other than general, non-hazardous, municipal-like wastes. Erickson has no documentation regarding the waste haulers used, if any, or the waste sites used, if any, other than two Tri-County waste hauling tickets provided by USEPA (which tickets did not exist in the Company's file and cannot be authenticated). Erickson cannot confirm that the tickets provided by USEPA actually document or confirm transportation of anything generated by or on behalf of Erickson.
8. Not applicable. See responses 3 through 7. The Company has no documents or current information to confirm that any wastes Erickson may have generated during the relevant time period went to any of the referenced landfills and absent proof to the contrary, Erickson denies that its wastes went there or, if they did, that they contained hazardous substances for which liability may attach. The two Tri-County waste-hauling tickets provided by USEPA did not exist in the Company's file and cannot be authenticated. During most of the relevant time period, the Company had fewer than 25 full-time employees and for much of the time, fewer than 15. The most knowledgeable person concerning Company operations during the historic time periods that are the subject of the 104(e) Letter is likely to be the former Company president, Charles Erickson, Jr., whose address and telephone number are provided above.
9. Not applicable. See responses 3 through 8.
10. No.
11. During the relevant time period that person would have been the former President, Charles Erickson, whose address and telephone number are provided above.
12. No.
13. We have no such information/Not applicable.
14. Correspondence regarding this matter should be directed to the undersigned. Information set forth herein was provided by Frank Gallo, Controller, and the

undersigned, both of whom can be reached at the letterhead address and telephone number.

15. The Company did not have a formal record retention policy that was followed during the relevant time period. Documents from the relevant time period were purged or destroyed in the normal course of business during whatever informal policy existed at the time of their destruction. The destroyed files would have been accounting records, as well as any paperwork generated during particular jobs. We believe certain of the accounting records were kept for approximately 15 years. See response 14 above.

C. No Admission Against Interest/Reservation of Rights.

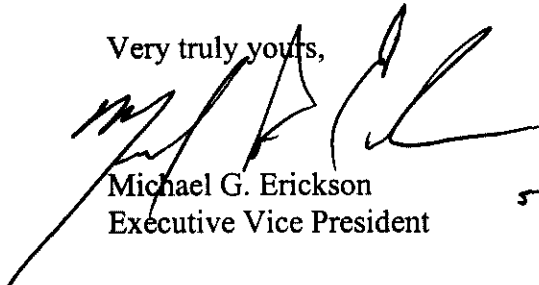
This response is not an admission of liability or fault in connection with the presence of hazardous substances on or about the Site, any environmental condition on or about the Site, or any release or threatened release of any hazardous or polluting substance on or about the Site. By providing this response, Erickson is not waiving, and in fact expressly reserves any claims or causes of action it has, now or in the future, in connection with the Site or any persons associated with it or the hazardous substances that may be there. This response is provided pursuant to a statutory directive and the Company must reserve, and does reserve any and all rights, to the fullest extent permitted by law, to object to and oppose its use or production in any matter or proceeding.

* * *

Erickson will supplement this response if USEPA can provide documents or information that it believes implicate the Company in the disposal of hazardous substances at the Site. As noted above, we are not in possession of any documentation evidencing the disposal of any wastes at the Site by anyone, let alone any wastes containing hazardous substances. The two documents USEPA provided to us were partially illegible and we cannot authenticate them as anything Erickson ever saw or received. To the extent they are viewed as credible information implicating the Company in the disposal of something at one of the landfills, Erickson submits that they evidence the disposal of a very limited volume of municipal-like waste, such wood 2x4s, paper, sheet rock, other wood scraps, sheetrock tape, a few bent nails, and the like.

If you have any questions regarding this response, please call me.

Very truly yours,


Michael G. Erickson
Executive Vice President

5-7-02



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